

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

J. MICHAEL CHARLES; MAURICE W.)	C. A. NO. 05-702 (SLR)
WARD, JR.; and JOSEPH I. FINK, JR., on)	(Lead Case)
behalf of themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
PEPCO HOLDINGS, INC; CONECTIV, and)	
PEPCO HOLDINGS RETIREMENT PLAN,)	
)	
Defendants.))	

**PLAINTIFFS' SUPPLEMENT TO THEIR PREVIOUS RESPONSE TO
DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

The Plaintiffs hereby supplement their prior Response to Defendants' Notice of Supplemental Authority [D.I. #79]. On February 13, 2007, the Appellants in *Register v. PNC Financial Servs. Group*, ___, F.3d ___, 2007 WL 222019 (3d Cir. 2006) petitioned the Third Circuit for rehearing *en banc* and, alternatively, for panel rehearing. On February 27, 2007, the Third Circuit denied the petition for rehearing. A copy of the *Register* docket is attached hereto as Exhibit A.

Dated: March 16, 2007

CHIMICLES & TIKELLIS LLP

By: /s/A. Zachary Naylor
 Pamela S. Tikellis (#2172)
 Robert J. Kriner (#2546)
 A. Zachary Naylor (#4439)

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and

James R. Malone, Jr.
(*pro hac vice*)
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(*pro hac vice*)
One Haverford Centre
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Haverford, PA 19041
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EXHIBIT A

[Home](#)[PACER](#)[Help](#)

General Docket US Court of Appeals for the Third Circuit

Court of Appeals Docket #: 05-5445
12/20/05

Filed:

Nsuit: 3791 Labor: E.R.I.S.A.
Register, et al v. PNC Fin Ser Grp Inc, et al
Appeal from: Eastern District of Pennsylvania

- - - - -
Lower court information:

District: 0313-2 : 04-cv-06097
Trial Judge: Legrome D. Davis, District Judge
Date Filed: 12/30/04
Date order/judgment: 11/22/05
Date NOA filed: 12/16/05

- - - - -

Fee status: paid

- - - - -
Prior cases:

None

Current cases:

None

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SANDRA REGISTER
Appellant

Bryan L. Clobes
FAX 215-864-2810
215-864-2800

[COR NTC ret]

Michael S. Tarringer

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215-864-2800

[COR NTC ret]

Caffery Faucher

18th & Cherry Streets

One Logan Square, 17th Floor

Philadelphia, PA 19103

David H. Weinstein

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215-545-7200

[COR NTC ret]

Andrea L. Wilson

FAX 215-545-6535

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Weinstein, Kitchenoff & Asher

1845 Walnut Street

Suite 1100

Philadelphia, PA 19103

Bryan L. Clobes

(See above)

[COR NTC ret]

Michael S. Tarringer

(See above)

[COR NTC ret]

David H. Weinstein

(See above)

[COR NTC ret]

Andrea L. Wilson

(See above)

[COR NTC ret]

Bryan L. Clobes

(See above)

[COR NTC ret]

Michael S. Tarringer

(See above)

[COR NTC ret]

GRACE B. MERCHANT
Appellant

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

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05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

KRISTINA BECKMAN
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

JOHN J. DAGGETT
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)

[COR NTC ret]

RICHARD RHOADES, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED

Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

v.

PNC FIN SER GRP INC
Appellee

William A. Slaughter
FAX 215-864-9788
215-864-8114
[COR NTC ret]
Arthur Makadon
FAX 215-864-9760
215-864-8200
[COR NTC ret]
Alan J. Davis

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FAX 215-864-9516
215-864-8230
[COR NTC ret]
Ballard, Spahr, Andrews &
Ingersoll
1735 Market Street

51st Floor
Philadelphia, PA 19103

PNC BANK NA
Appellee

William A. Slaughter
(See above)
[COR NTC ret]
Arthur Makadon
(See above)
[COR NTC ret]
Alan J. Davis
(See above)
[COR NTC ret]

PENSION COMMITTEE OF PNC
FINANCIAL SERVICES GROUP, INC.
PENSION PLAN

Appellee

William A. Slaughter
(See above)
[COR NTC ret]
Arthur Makadon
(See above)
[COR NTC ret]
Alan J. Davis
(See above)
[COR NTC ret]

PNC FINANCIAL SERVICES GROUP,
INC. PENSION PLAN

Appellee

William A. Slaughter
(See above)
[COR NTC ret]
Arthur Makadon
(See above)
[COR NTC ret]
Alan J. Davis
(See above)
[COR NTC ret]

AMERICAN ASSOCIATION OF
RETIRED PERSONS
Amicus-appellant

Jay E. Sushelsky
FAX 202-434-6424
202-434-2060
[COR NTC ret]
American Association of Retired
Persons
601 E Street, N.W.

Washington, DC 20049

EQUAL EMPLOYMENT ADVISORY
COUNCIL
Amicus-appellee

Ann E. Reesman
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[COR NTC ret]
McGuiness, Norris & Williams
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Suite 1200
Washington, DC 20005

CHAMBER COMMERCE US
Amicus-appellee

Ann E. Reesman
(See above)
[COR NTC ret]

ERISA IND COMM
Amicus-appellee

Jeffrey G. Huvelle
202-662-5526
[COR NTC ret]
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1201 Pennsylvania Avenue, N.W.
Washington, DC 20004

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05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

SANDRA REGISTER; GRACE B. MERCHANT; SUSAN L. WILSON;
KRISTINA BECKMAN; JOHN J. DAGGETT; RICHARD RHOADES, ON
BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

Appellants

v.

PNC FIN SER GRP INC; PNC BANK NA; PENSION COMMITTEE OF PNC FINANCIAL SERVICES GROUP, INC. PENSION PLAN; PNC FINANCIAL SERVICES GROUP, INC. PENSION PLAN

Appellees

AMERICAN ASSOCIATION OF RETIRED PERSONS;

Amicus-appellant

EQUAL EMPLOYMENT ADVISORY COUNCIL; CHAMBER COMMERCE US;
ERISA IND COMM

Amicus-appellee

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05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

12/20/05 CIVIL CASE DOCKETED. Notice filed by Sandra
Register,
Grace B. Merchant, Susan L. Wilson, Kristina
Beckman, John
J. Daggett, and Richard Rhoades. (tmk)

12/29/05 TRANSCRIPT PURCHASE ORDER (Part I), unnecessary for
appeal
purposes, filed. (tmk)

12/29/05 APPEARANCE from Attorneys Michael S. Tarringer, and Bryan L. Clobes on behalf of Appellants Sandra Register, Grace B. Merchant, Susan L. Wilson, Kristina Beckman, John J. Daggett, and Richard Rhoades, filed. (tmk)

12/29/05 INFORMATION STATEMENT on behalf of Appellants Sandra Register, Grace B. Merchant, Susan L. Wilson, Kristina Beckman, John J. Daggett, and Richard Rhoades, received. (tmk)

12/29/05 CONCISE SUMMARY OF CASE on behalf of Appellants Sandra Register, Grace B. Merchant, Susan L. Wilson, Kristina Beckman, John J. Daggett, and Richard Rhoades, received. (tmk)

12/29/05 DISCLOSURE STATEMENT on behalf of Appellants Sandra Register, Grace B. Merchant, Susan L. Wilson, Kristina Beckman, John J. Daggett, and Richard Rhoades, filed. (tmk)

12/29/05 DISCLOSURE STATEMENT on behalf of Appellees PNC Fin Ser Grp Inc, PNC Bank NA, Pension Comm PNC Fin, and PNC Fin Ser Grp Inc, filed. (tmk)

12/30/05 APPEARANCE from Attorney David H. Weinstein on behalf of Appellants Sandra Register, Grace B. Merchant, Susan L. Wilson, Kristina Beckman, John J. Daggett, and Richard Rhoades, filed. (tmk)

12/30/05 APPEARANCE from Attorneys William A. Slaughter, and

Arthur

Makadon on behalf of Appellees PNC Fin Ser Grp Inc,

PNC

Bank NA, Pension Comm PNC Fin, and PNC Ser Grp Inc,

filed.

(tmk)

12/30/05

of

APPEARANCE from Attorney Andrea L. Wilson on behalf

L. Appellants Sandra Register, Grace B. Merchant, Susan

Richard Wilson, Kristina Beckman, John J. Daggett, and

Rhoades, filed. (tmk)

1/4/06

CERTIFIED LIST filed. (tmk)

1/20/06

BRIEFING NOTICE ISSUED. Appellant brief and appendix

due 3/1/06. (tmk)

3/1/06 ELECTRONIC BRIEF on behalf of Appellants, Copies: 1,

Pages:

60, Word Count: 13,956, delivered by mail, filed.
Certificate of service date 3/1/06. (eh)

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3/1/06

Volumes: 2 APPENDIX on behalf of Appellants, Copies: 4,

(Vol. 1 attached to brief), Delivered by Mail, filed.
Certificate of service date 3/1/06. (eh)

3/2/06

Grace HARD COPY RECEIVED from Appellants Sandra Register,

B. Merchant, Susan L. Wilson, Kristina Beckman, John

J.

brief with

Daggett and Richard Rhoades submitting 10 ccs of
Vol 1 of appendix attached. (eh)

3/10/06

MOTION by Proposed Amicus-Appellant AARP for leave to proceed as amicus curiae, filed. Answer due 3/24/06. Certificate of Service dated 3/9/06. (mcw)

3/23/06

AARP

Appellants,

ORDER (Nygaard, Authoring Judge) granting motion by for leave to file amicus brief in support of filed. C-81 (mcw)

3/23/06

Appellant AARP,

by mail,

ELECTRONIC AMICUS BRIEF on behalf of Amicus-
Copies: 1, Pages: 32, Word Count: 6,974, delivered
filed. Certificate of service date 3/9/06. (mcw)

3/23/06

Appellant

HARD COPY RECEIVED of amicus brief from Amicus-
AARP, Copies: 10. (mcw)

3/30/06

word

filed.

MOTION by Appellees to file a brief in excess of the
limitations set forth in FRAP 32 (15,000 words),
Answer due 4/14/06. Certificate of Service dated

3/30/06.

(gpk)

3/30/06

of

APPEARANCE from Attorney Jay E. Sushelsky on behalf
Amicus-appellant AARP, filed. (tmk)

3/30/06

AARP,

DISCLOSURE STATEMENT on behalf of Amicus-appellant
filed. (tmk)

4/3/06

to

ORDER (Clerk) granting motion by Appellees for leave

file overlength brief with filing as of the date of
this
order, filed. (gpk)

4/3/06 ELECTRONIC BRIEF on behalf of Appellees. Copies: 1,
Pages:
by
mail, filed. Certificate of service date 4/3/06.
(gpk)

4/3/06 RESPONSE by Appellants in Opposition to motion by
Appellees
forth in
FRAP 32, filed. Certificate of Service dated 4/3/06.
(gpk)

4/4/06 HARD COPY RECEIVED of brief from Appellees, Copies:
10. (mcw)

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4/6/06 ORDER (Clerk) considering response by Appellants in
excess
imely
whole or in
vacate or
relief
will
of word limitations. Pursuant to F.R.A.P. 27(b), "[t] opposition filed after the motion is granted in part does not constitute a request to reconsider, modify the disposition; a motion requesting that must be filed." The Clerk's Order of April 3, 2006,

remain in effect, filed. (gpk)

4/10/06

MOTION by Proposed Amicus-Appellees Equal Employ and Chamber Commerce US for leave to proceed as amicus curiae, filed. Answer due 4/24/06. Certificate of Service dated 4/7/06. (mcw)

4/14/06
for leave

MOTION by Proposed Amicus-Appellee ERISA Ind Comm to proceed as amicus curiae, filed. Answer due 4/24/06. Certificate of Service dated 4/11/06. (mcw)

4/20/06
Copies: 1.

ELECTRONIC REPLY BRIEF on behalf of Appellants. Delivered by mail, filed. Certificate of service date 4/20/06. (gpk)

4/21/06
(gpk)

HARD COPY RECEIVED from Appellants (10cc of reply). ORDER (Ambro, Authoring Judge) granting motion Equal and Chamber Commerce US for leave to file brief as curiae in support of Appellees, filed. B-95 (mcw)

4/24/06
Appellees Equal

ELECTRONIC AMICUS BRIEF on behalf of Amicus-Employ and Chamber Commerce US, Copies: 1, Pages: 19, delivered by mail, filed. Certificate of service date 4/7/06. (mcw)

4/24/06
Appellees
(mcw)

HARD COPY RECEIVED of amicus brief from Amicus-Equal Employ and Chamber Commerce US, Copies: 10.

4/24/06
ERISA Ind

ORDER (Ambro, Authoring Judge) granting motion by Comm for leave to file brief as amici curiae in

support of

Appellees is granted, filed. B-100 (mcw)

4/24/06
ERISA

ELECTRONIC AMICUS BRIEF on behalf of Amicus-Appellee
Ind Comm, Copies: 1, Pages: 31, Word Count: 6,945,
delivered by mail, filed. Certificate of service date
4/11/06. (mcw)

4/24/06
Appellee

HARD COPY RECEIVED of amicus brief from Amicus-
ERISA Ind Comm, Copies: 10. (mcw)

4/24/06
Chamber

APPEARANCE from Attorney Ann E. Reesman on behalf of
Amicus-appellee Equal Employ, and Amicus-appellee
Commerce US, filed. (tmk)

5/3/06
behalf of

APPEARANCE from Attorney Jeffrey G. Huvelle on
Amicus-appellee ERISA Ind Comm, filed. (tmk)

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5/3/06
ERISA Ind

DISCLOSURE STATEMENT on behalf of Amicus-appellee
Comm, filed. (tmk)

8/9/06

LETTER dated 8/9/06 filed pursuant to Rule 28(j) from
counsel for Appellee, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

9/14/06
counsel
ZZ#PANEL (tmk)

LETTER dated 9/14/06 pursuant to Rule 28(j) from
for Appellants, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

9/22/06 LETTER dated 9/22/06 filed pursuant to Rule 28(j)
from
 counsel for Appellee, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

9/26/06 CALENDARED for Thursday, December 14, 2006. (clr)

11/7/06 LETTER dated 11/7/06 filed pursuant to Rule 28(j)
from
 counsel for Appellants, filed. ZZ#SEND ZZ#TO
ZZ#MERITS
 ZZ#PANEL (tmk)

11/22/06 APPEARANCE from Attorney Alan J. Davis on behalf of
Appellees PNC Fin Ser Grp Inc, PNC Bank NA, Pension
Comm
 PNC Fin and PNC Fin Ser Grp Inc, filed. (tmk)

11/30/06 LETTER dated 11/30/06 filed pursuant to Rule 28(j)
from
 counsel for Appellees, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

12/13/06 LETTER by Appellants dated 12/13/06 pursuant to Rule
28(j),
 filed. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL (tmk)

12/14/06 ARGUED Thursday, December 14, 2006 Panel: Fisher,
Chagares

Appellants:
 David H. Weinstein and Counsel for Appellees: Alan J.
Davis. (eh)

12/29/06 LETTER dated 12/29/06 filed pursuant to Rule 28(j)
from
 counsel for Appellant, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

1/17/07 LETTER dated 1/17/07 filed pursuant to Rule 28(j)
from
 counsel for Appellees, filed. ZZ#SEND ZZ#TO ZZ#MERITS

ZZ#PANEL (tmk)

1/29/07 LETTER dated 1/29/07 filed pursuant to Rule 28(j)
from
counsel for Appellees, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

1/30/07 PRECEDENTIAL OPINION (Fisher, Chagares and Greenberg,
Authoring Judge, Circuit Judges), filed. (tmk)

1/30/07 JUDGMENT AFFIRMED. Costs taxed against Appellants,
filed.
(tmk)

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2/13/07 PETITION by Appellant for rehearing en banc, filed.
Certificate of service dated 2/13/07. (tmk)

2/27/07 ORDER (Scirica, Chief Judge, Sloviter, McKee,
Rendell,
Jordan &
denying
petition for en banc rehearing by Appellants, filed.
*Judge
before the
original panel. (tmk)

3/7/07 MANDATE ISSUED, filed. (tmk)

3/7/07 RECORD released. (tmk)

PACER Service Center			
Transaction Receipt			
03/15/2007 14:39:12			
PACER Login:	ct0365	Client Code:	
Description:	dkt report	Case Number:	05-5445
Billable Pages:	11	Cost:	0.88